



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
2890 WOODBRIDGE AVENUE
EDISON, NEW JERSEY 08837-3679

SENT VIA EMAIL:
BRUSHB@coned.com

Brian Brush
Department Manager- EHS
Consolidated Edison Company of NY, Inc.
4 Irving Place- 6th Floor
New York, NY 10003

Re: Request for Information Pursuant to Sections 308 and 311 of the Clean Water Act,
33 U.S.C. Sections 1318(a) and 1321(m)
Consolidated Edison Company of NY, Inc. property near New Rochelle, NY

Dear Mr. Brush:

The U.S. Environmental Protection Agency ("EPA"), Region 2, is investigating whether discharges of oil occurred at or from the location set forth above into or upon waters of the United States in violation of the Clean Water Act ("CWA" or "Act") (33 U.S.C. §1291 et seq.), in particular, CWA § 311 (33 U.S.C. § 1321) and/or the regulations implementing these provisions.

EPA has records showing that an "onshore facility" (Facility) within the meaning of Section 311(a) of the Act is located at the subject real property. EPA also has records showing that Consolidated Edison Company of NY, Inc. is the owner or operator of the real property and the Facility within the meaning of Section 311 of the Act and that discharge(s), as that term is defined in Section 311 of the Act ("Discharge"), occurred on July 17, 2021. Furthermore, EPA has determined that the waterway into or upon which the Discharge from the Facility occurred is a water of the United States within the meaning of Section 311 of the Act. In addition, EPA has information showing that the Discharge contained or may have contained oil within the meaning of Section 311 of the Act.

This is a formal request for information (RFI) for EPA's use in investigating this matter. EPA is making this request pursuant to Sections 308 and 311 of the Act, 33 U.S.C. § 1318 and §1321, respectively, as described in the "Statutory Authority and Directions for Response," below. The specific information which EPA requests is listed in Appendix A to this letter and is titled "Clean Water Act Section 308/311 Information Request for Brian Brush Regarding Consolidated Edison Company of NY Inc. property located at or near Wright Island Marina in New Rochelle, NY". Appendix B contains instructions for responding to the RFI. You are legally required to respond to this request within thirty (30) days of receipt of this letter. Please provide all of the information listed in Appendix A, as directed below.

Statutory Authority and Directions for Response

The CWA at Section 311(b)(3) prohibits, except in certain situations, the discharge of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone. Section 311(b)(5) of the Act requires any person in charge of a vessel, an onshore facility, or an offshore facility, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of Section 311(b)(3), immediately notify the appropriate agency of the United States Government of such discharge. Regulations promulgated in accordance with Section 311(j) of the Act and set forth at 40 C.F.R. Part 112, establish, among other things, procedures, methods, equipment, and other requirements to prevent the discharge of oil into navigable waters of the United States or adjoining shorelines.

EPA's authority to obtain information to carry out the objectives of the Act, including those set forth in Section 311, is set forth at Section 308(a) of the Act. Information gathering authority pertaining to Section 311 is also set forth at Section 311(m) of the Act, which requires the owner or operator of a facility to establish and maintain records, make reports, install, use, and maintain monitoring equipment and methods, and provide information as the Administrator may require to carry out the objectives of Section 311.

Therefore, pursuant to the statutory requirements and authority vested in the Administrator, and as delegated to Region 2, it is hereby requested that you provide the information requested in Appendix A enclosed with this letter within thirty (30) calendar days of receipt of this letter.

Failure to respond to this RFI may subject you to enforcement action pursuant to the Act for injunctive relief, and penalties may also be sought.

Please be informed that you may, if you so desire, assert a business confidentiality or trade secret claim as set forth in Subpart B, Part 2, Chapter I of Title 40 of the CFR (40 CFR 2.201 et seq.) covering all or part of the information being requested. Information and instructions regarding the assertion of confidentiality/trade secrets are set forth in Appendix B.

Information pertinent to the RFI is not subject to the approval requirements of the Paperwork Reduction Act of 1989, 44 U.S.C. §3501 et seq.

Any documents to be submitted by Respondent as part of this RFI shall be signed by an authorized representative of the respective entity (see 40 C.F.R. §122.22). Details and instruction regarding this requirement are set forth in Appendix B.

All information required to be submitted pursuant to this RFI shall be sent by email to the following address:

Karl Lindberg
Lindberg.karl@epa.gov

Should you have any questions regarding this request, feel free to have your staff contact Karl Lindberg at lindberg.karl@epa.gov.

Sincerely,

Douglas Kodama, Branch Chief
Response and Prevention Branch

Enclosures: Appendix A - Information Requested
Appendix B - Instructions

APPENDIX A

Clean Water Act Section 308/311 Information Request for Brian Brush

Regarding Consolidated Edison Company of NY, Inc.
property located at or near Wright Island Marina in New Rochelle, NY
NRC Report No: 1311048/1311009/1311012

You are hereby requested to provide the following information regarding the Discharge, which occurred on or about July 17, 2021, in New Rochelle, NY:

1. A summary of the discharge of dielectric fluid into a water body, which occurred on or about July 17, 2021. The summary should include cause of the discharge, actions taken, name of the waterway (or description if not available), and the quantity discharged into the waterway.
2. If there was no discharge into a water body, please answer all of the following questions except question 5. Instead of Question 5, please state the amount of oil discharged in barrels or gallons. Provide any calculations or other information used to determine the amount discharged. If the release was an oil mixture, provide the total amount of the mixture, in barrels or gallons. For oil mixtures, provide the relative percentages of each component. You may also provide any other information to further demonstrate that the discharge did not reach or impact any water body.
3. Provide the names of all owners and all operators of the facility from which the Discharge originated and the classification of the facility (i.e. oil storage; oil pipeline; oil transportation; oil pumping, etc.).
4. On a map, show the coordinates (latitude and longitude) of the Facility, and both the start and end points of the Discharge.
 - a. Also include the names of all downstream receiving waters that the spill affected.
 - b. Additionally, list all downstream receiving water bodies up to and including the first major river or lake, regardless of whether or not the spill affected the water bodies.
5. State the amount of oil discharged into the waterway in barrels or gallons. Provide any calculations or other information used to determine the amount discharged into the waterway. If the release was an oil mixture, provide the total amount of the mixture, in barrels or gallons, that was discharged into the waterway. For oil mixtures, provide the relative percentages of each component.
6. If 1,000 or more gallons were discharged into the waterway, then provide a copy of the report submitted to the EPA Regional Administrator, as required by 40 CFR §112.4. If

the Discharge was the second Discharge of 42 gallons or greater into the waterway in a twelve-month period, then provide a copy of the report submitted to the EPA Regional Administrator, as required by 40 CFR §112.4. Provide a certified mail receipt or other evidence of any reports submitted to the EPA Regional Administrator.

7. Provide copies of all reports you made to federal, state or local entities regarding the Discharge.
8. Duration of the Discharge event. Report the date and time the Discharge began, the date and time the Discharge ceased, how long the material remained in the watercourse, as well as on the shoreline or banks, and when all material was removed from waters of the United States and adjoining shoreline.
9. Discuss the cause of the Discharge. Causes may include, but are not limited to, the following: human error; corrosion; failure of overfill protection; failure to inspect equipment; etc.
10. Describe the general surface/rainwater run-off direction and pathway to the Discharge location. Provide a map or sketch showing the location of the cause of the Discharge and the distance the Discharge traveled. State the distance traveled in feet.
11. Photographs of the Discharge and the Discharge site both before and after cleanup, if available.
12. Is the Facility subject to the requirements of 40 CFR Part 112, and if so, does it have a Spill Prevention Control and Countermeasure Plan (SPCC Plan) developed in accordance with 40 CFR Part 112? Please provide a copy of the SPCC Plan.
13. Discuss applicable portions of the SPCC Plan that had failed, resulting in the Discharge. Your response may include, but is not limited to, the following: failure of secondary containment; failure of containment impracticability measures; inadequate training; failure of overfill protection; failure to inspect containers and/or piping; etc.
14. Discuss applicable portions of the SPCC Plan that were successfully implemented as a result of, or during, the Discharge. Your response may include, but is not limited to, the following items: successful countermeasures for Discharge discovery, response, and cleanup; disposal of recovered materials; implementation of contact list; functioning overfill protection; implementation of oil spill contingency plan; etc.
15. Did the Discharge result in an Amendment to the Facility's SPCC Plan? If yes, provide a copy of the SPCC Plan Amendment. If the Discharge resulted in a technical amendment, provide the Professional Engineer certification as required by 40 CFR §112.5(c).
16. Is the Facility subject to 40 CFR §112.20 regarding Facility Response Plans? If yes, discuss how the Facility Response Plan was implemented when responding to the Discharge. Your response may include, but is not limited to, the following:

implementation of Emergency Response Action Plan; use of an Oil Spill Removal Organization; response actions taken by facility personnel; booming strategies; implementation of small, medium, or worst-case response strategies; role of the Qualified Individual, etc.

17. If the Facility is subject to the Facility Response Plan requirements, did the Facility self-document Discharge response actions for credit towards its drills and exercises program? If yes, state which National Preparedness for Response Exercise Program (PREP) Guidelines the facility has documented credit for, and provide a copy of those records.

18. A Safety Data Sheet (SDS) or equivalent for the material(s) which were discharged.

19. Documentation of any penalties assessed by local, state or federal agencies.

Please email your response to the following address:

Karl Lindberg
Lindberg.karl@epa.gov

If you need additional time to respond to this request or if you have any questions relating to this Information Request, please contact Karl Lindberg at lindberg.karl@epa.gov.

APPENDIX B

INSTRUCTIONS

Unless otherwise specified, the following general instructions and definitions apply when providing the information requested in Appendix A.

General Instructions

1. Provide a separate narrative response to each question and subpart of a question set forth in the RFI.
2. Each response shall identify the number of the question, and if relevant, any subpart to which a response is being provided.
3. Label each document submitted in response to the RFI with the request number and subpart (if applicable) to which it corresponds. If anything is deleted or redacted from a document produced in response to the RFI, state the reason for, and the subject matter of, the deleted or redacted information.
4. If a document you submit is responsive to more than one request, please provide one copy of the document and identify all the requests, by number and subpart, to which it corresponds.
5. For each response, organize the requested information or documents chronologically.
6. When documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information are not available or in your possession and identify any source that either possesses or is likely to possess such information.
7. If any documents or information responsive to a request are not known or are not available to you at the time you submitted your response, but later become known or available to you, you should submit the new information as a supplement to your response. If at any time after submission of your response you learn that any portion is or becomes false, incomplete, or misrepresents the facts, you should notify the EPA of this fact as soon as possible and provide a corrected response. If any part of the response to this Information Request is found to be false, the signatory to the response and the company may be subject to criminal prosecution.
8. If you claim that an entire document responsive to this Information Request is withheld on the basis of a privilege, identify the document and provide the basis for asserting any privilege. For any portion of a document that you claim is withheld on the basis of a privilege, provide the portion of the document for which you are not asserting any privilege;

identify the portion of the document for which you are asserting any privilege; and provide the basis for such an assertion.

9. You should provide responsive documents or information even though you consider it to be confidential information or trade secrets. You may assert a business confidentiality claim for part or all of the information requested, as set forth in 40 C.F.R. Part 2, Subpart B. Information covered by such a claim will be disclosed by the EPA only to the extent and only by the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no confidentiality claim accompanies the information when the EPA receives it, the information may be made available to the public by the EPA without further notice to you.

If you would like the EPA to treat any information, document, or response as “confidential,” you must advise the EPA by placing on or attaching a cover sheet to any document or prefacing any response with such language as “trade secret,” “proprietary,” or “confidential business information.” You must clearly identify allegedly confidential portions of otherwise non-confidential documents, and you may want to submit these separately to facilitate identification and handling by the EPA. Pursuant to 40 C.F.R. Part 2, Subpart B, the EPA may at any time send you a letter asking you to substantiate your confidentiality claim.

10. You or a responsible agent must submit all requested information under an authorized signature with the following certification:

I certify under the penalty of law that I have examined and am familiar with the information submitted in responding to this information request for production of documents. Based on my review of all relevant documents and inquiring of those individuals immediately responsible for providing all relevant information and documents, I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

General Definitions

All terms used in the RFI shall have their ordinary meaning unless such terms are defined in the CWA, 33 U.S.C. §§ 1251-1387, or the CWA’s implementing regulations.

1. For purposes of clarity, EPA has included below the definition of “Discharge” as set forth in Section 311 of the Act. You should consider this definition in your response.

“Discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section [402] of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section [402] of this Act, and subject to a condition in such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section [402] of this Act, which are caused by events occurring within the scope of relevant

operating or treatment systems, and (D) discharges incidental to mechanical removal authorized by the President under subsection (c) of this section.

2. "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

The following specific definitions shall apply to the RFI:

3. "Or" shall mean and/or.
4. "Document" is used in its broadest sense and shall mean and refer to all written or graphic matter of every kind and description however produced or reproduced, whether draft or final, original or reproduction.